



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2005

Ms. Denise Obinegbo
Open Records Specialist
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2005-04580

Dear Ms. Obinegbo:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 224849.

The Richardson Police Department (the "department") received a request for arrest and incident reports relating to domestic violence incidents involving a named individual and two specified addresses. You inform us that the department has released some of the requested information. You claim that the rest of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Generally, section 552.108(a)(1) is applicable if release of the information would interfere with a pending criminal investigation or prosecution. Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication.

You seek to withhold information relating to service number 05-019655 under section 552.108(a)(1). You inform us that the information relates to a pending criminal prosecution. Based on your representation, we find that section 552.108(a)(1) is applicable to that information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). You assert that section 552.108(a)(2) is applicable to information relating to service number 91-17418. You inform us that the information relates to charges that were dismissed at the request of the complaining witness. Based on your representation, we find that section 552.108(a)(2) is applicable to that information.

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information with respect to service numbers 05-019655 and 91-17418, even if the information does not literally appear on the front page of an offense or arrest report. The department may withhold the rest of the information that relates to these service numbers under section 552.108(a)(1) and (a)(2).

Although basic information under section 552.108(c) includes an arrested person's social security number, that information may be confidential under section 552.101 in conjunction with federal law. The 1990 amendments to the Social Security Act make confidential social security numbers and related records that were obtained or are maintained by a state agency or political subdivision of the state under any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 at 2-4 (1994). We have no basis for concluding that the social security number of the arrested person in service number 91-17418 is confidential under section 405(c)(2)(C)(viii)(I) and therefore

excepted from public disclosure under section 552.101 on the basis of the federal law. We caution you, however, that the Act prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Prior to releasing any social security number information to the public, the department should ensure that no such information was obtained or is maintained by the department under any provision of law enacted on or after October 1, 1990.

In summary: (1) except for basic information under section 552.108(c), the department may withhold the information relating to service numbers 05-019655 and 91-17418 under section 552.108(a)(1) and (a)(2) of the Government Code; and (2) the department may be required to withhold the social security number of the arrested person in service number 91-17418 under section 552.101 in conjunction with federal law. As we are able to make these determinations, we do not address your other arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

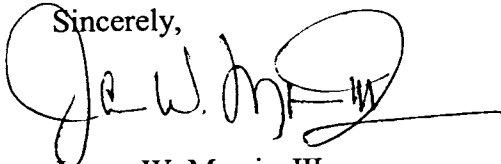
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a large, stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 224849

Enc: Submitted documents

c: Mr. George W. Culler III
P.O. Box 833756
Richardson, Texas 75083-3756
(w/o enclosures)